

Owen W. Dukelow, OSB No. 965318
email: owen@khpatent.com
Kolisch Hartwell, P.C.
520 S.W. Yamhill Street, Suite 300
Portland, Oregon 97204
Telephone: (503) 407-7170

Attorneys for Plaintiff Matthew Scott Brauer

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

MATTHEW SCOTT BRAUER,

Plaintiff,

v.

MCMENAMINS, INC.,

Defendant.

CASE NO.: 3:22-cv-1078

COMPLAINT FOR COPYRIGHT
INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

DEMAND FOR JURY TRIAL

Plaintiff MATTHEW SCOTT BRAUER by and through his undersigned counsel, brings this Complaint against Defendant MCMENAMINS, INC. for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff MATTHEW SCOTT BRAUER (“Brauer”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Brauer’s original copyrighted Work of authorship in his Work.
2. Brauer was born in 1982 in Landstuhl, Germany to American parents. He graduated with honors from the University of Washington with dual degrees in philosophy and Russian literature/language in 2005. Brauer interned with Black Star and VII New York, worked

for daily newspapers, then the Northwest Herald in suburban Chicago, the Fling Journal in Flint, Michigan and moved to China in 2007. Brauer's clients and publications include Time, Esquire, Bloomberg Businessweek, Bloomberg Markets, Le Monde, The New York Times, The Wall Street Journal, Montana's Office of Tourism, The Verge / Vox Media, NPR, NSMBC, Morgenbladet, and many others. His awards include American Photography 36 - Selected 2020; Time's 100 Best Photographs of 2015; Boston Press Photographers Association - 1st Place Portraits, Honorable Mention - Animals 2015; Grand Prix - Feztiv Art Shanghai 2010, and more. Brauer's selected exhibitions include "The Politices of Images" (Brazil) 2018, International Festival of Photography (Brazil) 2017, "This is the Worst Party I've Ever Been To." - Solo exhibition at BG Press Photo 2016, "Giving Trees" presented by the Magnum Foundation (NYC), as well as "Scene on the Street" at Vermont Photo Space, to list a few.

3. Defendant MCMENAMINS, INC. ("McMenamins") is a collection of historic hotels and microbreweries throughout Oregon and Washington states. McMenamins owns and operates more than 50 popular establishments including 12 hotels, 24 breweries, wineries, movie theatres and music venues. At all times relevant herein, McMenamins owned and operated the internet website located at the URL www.mcmenamins.com (the "Website").

4. Brauer alleges that McMenamins copied Brauer's copyrighted Work from the internet in order to advertise, market and promote its business activities. McMenamins committed the violations alleged in connection with McMenamins' business for purposes of advertising and promoting sales to the public in the course and scope of the McMenamins' business.

JURISDICTION AND VENUE

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in Oregon.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

9. McMenamins, Inc. is an Oregon Corporation, with its principal place of business at 430 N Killingsworth Street, Portland, Oregon, 97217, and can be served by serving its Registered Agent, Mr. Brian C. McMenamin, at the same address.

THE COPYRIGHTED WORK AT ISSUE

10. In 2019, Brauer created the photograph entitled NIY171208, which is shown below and referred to herein as the “Work”.



11. Brauer registered the Work with the Register of Copyrights on January 9, 2018 and was assigned the registration number VA 2-083-389. The Certificate of Registration is attached hereto as Exhibit 1.

12. Brauer's Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

13. At all relevant times Brauer was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

14. McMenamins have never been licensed to use the Work at issue in this action for any purpose.

15. On a date after the Work at issue in this action was created, but prior to the filing of this action, McMenamins copied the Work.

16. On or about August 18, 2021, Brauer discovered the unauthorized use on the Website in an article entitled "I Have No Idea What I Saw," posted on February 12, 2019.

17. McMenamins copied Brauer's copyrighted Work without Brauer's permission.

18. After McMenamins copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its specialty historic hotel and microbrew business.

19. McMenamins copied and distributed Brauer's copyrighted Work in connection with McMenamins' business for purposes of advertising and promoting McMenamins' business, and in the course and scope of advertising and selling products and services.

20. Brauer's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

21. McMenamins committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

22. Brauer never gave McMenamins permission or authority to copy, distribute or display the Work at issue in this case.

23. Brauer notified McMenamins of the allegations set forth herein on October 19, 2021 and November 23, 2021. To date, the parties have failed to resolve this matter. Copies of the Notices to McMenamins are attached hereto as Exhibit 3.

COUNT I
COPYRIGHT INFRINGEMENT

24. Brauer incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Brauer owns a valid copyright in the Work at issue in this case.

26. Brauer registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

27. McMenamins copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Brauer's authorization in violation of 17 U.S.C. § 501.

28. McMenamins performed the acts alleged in the course and scope of its business activities.

29. McMenamins' acts were willful.

30. Brauer has been damaged.

31. The harm caused to Brauer has been irreparable.

WHEREFORE, the Plaintiff Matthew Scott Brauer prays for judgment against the Defendant McMenamins, Inc. that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff his actual damages and McMenamins' profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

- d. Plaintiff be awarded pre and post-judgment interest; and
- e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: July 22, 2022

Respectfully submitted,

KOLISCH HARTWELL, P.C.

s/ Owen W. Dukelow

Owen W. Dukelow, OSB No. 965318

owen@hkpatent.com

520 S.W. Yamhill Street, Suite 300

Portland, OR 97204

503-407-7170 – Telephone

Attorneys for Plaintiff Matthew Scott Brauer